

1 STEPHEN R. HARRIS, ESQ.  
2 Nevada Bar No. 001463  
3 HARRIS LAW PRACTICE LLC  
4 6151 Lakeside Drive, Suite 2100  
5 Reno, NV 89511  
6 Telephone: (775) 786-7600  
7 E-Mail: [steve@harrislawreno.com](mailto:steve@harrislawreno.com)  
8 Proposed Attorneys for Debtor

9 UNITED STATES BANKRUPTCY COURT  
10 FOR THE DISTRICT OF NEVADA

11 \* \* \* \* \*

12 IN RE: Case No. 18-51144-btb  
13 (Chapter 11)  
14 COPPER CANYON PARTNERS LLC,  
15 Debtor.

16 **EMERGENCY MOTION FOR ORDER**  
17 **AUTHORIZING MAINTENANCE OF**  
18 **PREPETITION BANK ACCOUNT**

19 Hearing Date: OST Pending  
20 Hearing Time: OST Pending  
21 Est. Time: 10 minutes  
22 Set by: Judge Beesley

23 \_\_\_\_\_/  
24 COPPER CANYON PARTNERS LLC, a Nevada limited liability company ("Debtor"),  
25 by and through its proposed attorneys STEPHEN R. HARRIS, ESQ. of HARRIS LAW  
26 PRACTICE LLC, hereby moves this Court for the entry of an emergency order authorizing the  
27 maintenance of the Debtor's prepetition Bank Account (all as hereinafter defined).

28 This Emergency Motion for Order Authorizing Maintenance of Prepetition Bank Account  
("Motion") is based on the points and authorities below, the papers and pleadings on file herein  
including the Declaration of Phillip Kirk DeLaMare ("DeLaMare Declaration"), and any evidence  
or oral argument of counsel presented at the time of the hearing on this Motion.

I.

**INTRODUCTION**

1. On October 11, 2018 (the "Petition Date"), the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code.

2. No request has been made for the appointment of a trustee or examiner, and no official committees have yet been established in these cases.

II.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1134. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (M).

4. The basis for the relief sought herein are Sections 105 and 363 of the Bankruptcy Code, Fed. R. Bankr. P. 4001 and 6003, and LR 4001.

5. Venue of Debtor's Chapter 11 case in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

III.

**BACKGROUND**

6. The Debtor is a real estate developer with a planned development community located in Sparks, Nevada, consisting of approximate 1,200 acres of vacant land. The Debtor continues to operate its business as Debtor and Debtor-In-Possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

IV.

**RELIEF REQUESTED**

A. **The Debtor's Bank Account**

7. To manage its business affairs efficiently and seamlessly, the Debtor must continue to utilize a certain existing bank account (the "Bank Account") post-petition. The Bank Account is essential for the Debtor's continued status of staying in business as a going concern. A summary detailing the Bank Account used by the Debtor, including the bank balance on the Petition Date, is attached hereto as **Exhibit "A"** hereto and incorporated herein by that reference.

1           8.       Post-petition, the Debtor proposes to retain its current Bank Account to avoid  
2 interruption in its ongoing business practices which require daily electronic deposit and  
3 withdrawal activity from the Bank Account. As indicated on Exhibit "A", the Bank Account is  
4 located at US Bank.

5           9.       As indicated in Paragraph 6 above, the Debtor is engaged in the business of  
6 developing its real property and must have the ability to pay ongoing operational expenses and  
7 debt service.

8           10.      The Debtor seeks authorization to continue using its pre-petition cash management  
9 system as set forth herein on a post-petition basis.

10       **B.       Specific Procedures Requested**

11           11.      Through this Motion, the Debtor requests that this Court grant the following relief  
12 and authorize the following procedures:

13               a.       that the Debtor is authorized and empowered to: 1) maintain its Bank  
14 Account in existence as of the Petition Date and as listed and described in Exhibit "A"; 2)  
15 treat the Bank Account for all purposes as a Debtor-In-Possession Account; 3) use, in their  
16 present form, existing checks and other documents related to the Bank Account; 4) pay  
17 post-petition ordinary course bank fees in connection with the Bank Account; and 5)  
18 perform its obligations under the documents and agreements governing the Bank Account;

19               b.       that the Bank at which the Debtor maintains its Bank Account is authorized  
20 and directed to: 1) continue to administer, service, and maintain the Bank Account as such  
21 Bank Account was administered, serviced, and maintained prior to the Petition Date,  
22 without interruption and in the usual and ordinary course; and 2) to pay any and all checks,  
23 drafts, wires, automated clearinghouse transfers, electronic fund transfers, or other items  
24 presented, issued, or drawn on the Bank Account (collectively, the "Debits") arising on or  
25 after the Petition Date, so long as there are sufficient collected funds in the Bank Account  
26 and in accordance with the agreements governing said Bank Account, including, without  
27 limitation, any prepetition cash management agreements, merchant service agreements,  
28 or treasury services agreements;

1 c. that Debits issued on the Bank Account prior to, but presented after, the  
2 commencement of the Debtor's Chapter 11 cases are honored and paid;

3 d. that if the Debtor deems that any transactions should not be honored, that  
4 the Debtor shall promptly furnish to the Bank a list of those Debits drawn or issued that  
5 should not be paid. The Bank is authorized and directed to rely on the representations of  
6 the Debtor as to which Debits are authorized to be honored and dishonored, whether or  
7 not such Debits are dated prior to, on, or subsequent to the Petition Date, and whether or  
8 not the Bank believes the payment is authorized by an order of the Court. To the extent  
9 that the Debtor directs that any Debit be dishonored, the Debtor may issue replacement  
10 Debits consistent with the orders of this Court.

11 e. that nothing contained in this Motion or its subsequent order may prevent  
12 the Debtor from closing the Bank Account as it deems necessary and appropriate;

13 f. that the Debtor reimburse the Bank for any claim arising prior to or after  
14 the Petition Date in connection with Debits deposited with the Bank which have been  
15 dishonored or returned for insufficient funds in the applicable account;

16 g. that each Bank that maintained the Bank Account implements reasonable  
17 handling procedures to effectuate the terms requested in this Motion. The Debtor requests  
18 that no Bank that implements such handling procedures be liable to the Debtor or its estate,  
19 or otherwise held in violation of this Motion or its subsequent order, for honoring a  
20 prepetition Debit or other Debit: 1) at the direction of the Debtor that such prepetition  
21 Debit or other Debit be honored; 2) in the good faith belief that the Court has authorized  
22 that such prepetition Debit or other Debit be honored; or 3) as a result of an innocent  
23 mistake made despite implementation of such handling procedures;

24 h. that the relief, rights, and responsibilities requested herein are deemed to  
25 apply to any and all Bank Accounts maintained in the Debtor's name;

26 i. that to the extent any other order is entered directing a Bank to honor Debits  
27 made, drawn, or issued in payment of prepetition claims, the obligation to honor such  
28 items are subject to the order authorizing this Motion;

j. that the Debtor and the Bank is authorized and directed to continue to perform pursuant to the terms of any prepetition documents and agreements governing the Bank Account, except and to the extent otherwise directed by the terms of this order. The Debtor requests that the Bank be authorized to continue offsetting any funds deposited in the Bank Account by the Debtor to the extent necessary to cover any fees, charges, and assessments set forth or provided for in the agreements governing the Bank Account or as otherwise permitted in the ordinary course of business pursuant to the agreements governing the Bank Account. The parties to such agreements seek to continue to enjoy the rights and remedies afforded them under such agreements, except to the extent modified by the Court or by operation of the Bankruptcy Code.

## V.

### LEGAL ARGUMENT

#### A. The Court Has The Authority To Grant The Relief Requested

Uncertainty and risk surround the inception of every Chapter 11 case. Included within this class of risks is a debtor-in-possession's struggle to maintain current operations. In this Chapter 11 case, the Debtor requires the continued use of its Bank Account. Absent the Bank Account, the Debtor will suffer significant interruption to its business operations. To avert this prospect, the Debtor seeks authority to continue the operation of its existing Bank Account.

#### B. Cause Exists To Authorize The Debtor To Utilize Existing Bank Account

A necessary aspect of the Debtor maintaining its business is the Debtor being permitted to continue to utilize its existing Bank Account to pay operating expenses. As numerous courts have indicated, the Bankruptcy Code grants discretionary authority to a bankruptcy court to allow the continued use of bank account and merchant accounts. *See, e.g., In re The Charter Co.*, 778 F.2d 618 (11<sup>th</sup> Cir. 1985) (court noted that the bankruptcy court authorized the Debtor to maintain its existing bank accounts); *In re Lorber Indus. of Cal.*, 373 B.R. 663, 665 (B.A.P. 9<sup>th</sup> Cir. 2007) (discussing that the bankruptcy court allowed the debtor to continue using its prepetition workers' compensation program bank account for the purposes of administering benefits); *In re Grant Broad., Inc.*, 75 B.R. 819, 820 (E.D. Pa. 1987) (court noted an order by the bankruptcy court

1 authorizing use of cash collateral and prepetition bank accounts); In re Charter Behavioral Health  
 2 Systems, LLC, 292 B.R. 36, 41 (Bankr. D. Del. 2003) (court allowed the Debtor to continue to  
 3 use its existing bank account without the necessity to close all prepetition account and open new  
 4 post-petition account); In re Hechinger Inv. Co. Of Del., Inc., 282 B.R. 149, 150 (Bankr. D. Del.  
 5 2002) (court entered an order on the petition date authorizing the Debtor to continue to use its  
 6 existing prepetition bank account); In re UAL Corp., 2002 WL 34344255, 1 (Bankr. N.D. Ill.  
 7 2002) (court authorized the Debtor, within the reasonable exercise of its business judgment, to  
 8 continue using all of its bank accounts in existence on the petition date); In re New York City  
 9 Shoe, Inc., 78 B.R. 426, 427 (Bankr. E.D. Pa. 1987) (court approved of the debtor's continued  
 10 routine deposits of post-petition funds into prepetition bank accounts).

11 Pursuant to U.S. Trustee Guideline 4.4.6, a Chapter 11 debtor in possession must close its  
 12 prepetition bank account and open new account. This requirement is designed to: (a) provide a  
 13 clear line of demarcation between prepetition and post-petition transactions and operations; and  
 14 (b) block the inadvertent payment of prepetition claims through the payment of checks drawn  
 15 prior to the commencement of a debtor's case. However, courts often deviate from the strict  
 16 recommendations of Guideline 4.4.6 based upon the unique circumstances of each case and if  
 17 doing so facilitates a debtor's successful reorganization. See, e.g., In re The Colad Group, Inc.,  
 18 324 B.R. 208, 217 (Bankr. W.D.N.Y 2005); In re Charter Behavioral Health Sys., LLC, 292 B.R.  
 19 at 41.

20 As stated in the DeLaMare Declaration, to require the Debtor to close its Bank Account  
 21 and to open a new bank account would cause substantial disruption and delay in the Debtor's  
 22 ongoing business operations and could materially and adversely affect the Debtor's business. To  
 23 avoid such problems and to ensure as smooth a transition into Chapter 11 as possible, it is  
 24 important that the Debtor be permitted to continue using its current existing Bank Account in  
 25 order to pay post-petition expenses in the ordinary course of business.

26 The Debtor requests that its Bank Account be deemed and designated as Debtor-in-  
 27 Possession Account, and that its maintenance and continued use, in the same manner and with the  
 28 same account number, style and document forms (including checks) as during the prepetition



1 period, be authorized, subject only to: (a) designation of the Bank Account as Debtor-in-  
 2 Possession Account; and (b) a prohibition against honoring prepetition checks without specific  
 3 authorization from this Court and the Debtor. The Debtor will advise the Bank not to honor  
 4 checks issued prior to the commencement of this Chapter 11 Case, except as authorized by this  
 5 Court. By so advising the Banks, the Debtor will have achieved the goals of the bank-account-  
 6 closing requirement – (a) establishing a clear demarcation between prepetition and post -petition  
 7 checks, and (b) blocking the inadvertent payment of prepetition checks– without disrupting the  
 8 Debtor’s ongoing business operations.

9 On the Petition Date, the Debtor tendered a check to its general bankruptcy counsel, Harris  
 10 Law Practice LLC, in the amount of \$25,000.00, said sum to serve as an advance retainer for legal  
 11 services and costs to be incurred in this Chapter 11 proceeding. The Debtor requests authorization  
 12 for the Bank to honor this check so that Harris Law Practice LLC may deposit the retainer in its  
 13 client trust account. The pre-petition legal fees and costs incurred by Harris Law Practice LLC  
 14 for analysis and preparation/filing of the Chapter 11 petition (estimated at \$6,000.00, including  
 15 the \$1,717.00 filing fee) shall be paid from the \$25,000 retainer, with the remaining balance to be  
 16 held in trust and used to pay post-petition legal fees and costs only after Court approval is  
 17 obtained.

18 The Court has the authority to grant the relief requested by the Debtor concerning its Bank  
 19 Account under Section 105 and 363 of the Bankruptcy Code, and it is proper for this Court to  
 20 grant such relief as it is in the best interest of the creditors of the Debtor’s estate. Again, Section  
 21 105(a) provides, in pertinent part, that “[t]he court may issue any order, process, or judgment that  
 22 is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Because  
 23 the maintenance and continued use of the Bank Account is crucial to the Debtor’s ongoing  
 24 business operations, and ultimately its reorganization, this Court has the authority to order the  
 25 relief sought herein by virtue of Section 105(a).

26 **C. The Requirements Of Bankruptcy Rule 6003 Have Been Satisfied And Bankruptcy**  
 27 **Rule 6004(h) Is Properly Waived**

28 Pursuant to Sections 105(a) and 363(c)(1) of the Bankruptcy Code, the Debtor requests

1 that this Court authorize the Debtor to continue the collection and disbursement of cash in  
2 accordance with its existing Bank Account.

3 However, Fed. R. Bankr. P. 6004(h) provides that an "order authorizing the use, sale, or  
4 lease of property . . . is stayed until the expiration of 14 days after entry of order, unless the court  
5 orders otherwise." In view of the relief requested herein and the risk to the Debtor's operations  
6 if the Debtor's Bank Account is interrupted, a 14 day stay of the relief sought herein is impractical.  
7 Accordingly, the Debtor requests that this Court waive the stay under Fed. R. Bankr. P. 6004(h)  
8 and provide in the order granting the relief sought herein that such order shall be effective  
9 immediately *nunc pro tunc* to the Petition Date.

10 VI.

11 CONCLUSION

12 WHEREFORE, Debtor respectfully requests that the Court enter an order authorizing the  
13 maintenance of the Debtor's prepetition Bank Account and continued cash management system  
14 as set forth herein and in the DeLaMare Declaration, and that any such order include a waiver of  
15 the stay under Rule 6004(h); and for such other relief as is just and proper.

16 DATED this 12<sup>th</sup> day of October, 2018.

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19 STEPHEN R. HARRIS, ESQ.  
20 HARRIS LAW PRACTICE LLC

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23 Proposed Attorneys for Debtor  
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# EXHIBIT “A”

Bank	Account No.	Account Type	Balance on Petition Date
US Bank	*****2251	General Account	\$2,500.00